

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

J. BARRIOS, FNU HERNANDEZ, FNU
WHITE, and FNU GUTIERREZ,

Defendants.

Case No. 1:23-cv-00054-HBK (PC)

ORDER TO SHOW CAUSE WHY
DEFENDANT GUTIERREZ SHOULD NOT
BE DISMISSED FROM THIS ACTION FOR
FAILURE TO PROVIDE SUFFICIENT
INFORMATION TO EFFECTUATE
SERVICE

(Doc. No. 18)

THIRTY (30) DAY DEADLINE

Plaintiff Durrell Anthony Puckett is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants J. Barrios, FNU Hernandez, FNU White, and FNU Gutierrez for violation of Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment.

On February 17, 2023, the Court issued an order directing service on Defendants under the Court's E-Service pilot program for civil rights cases for the Eastern District of California. (Doc. No. 18). On May 4, 2023, the Court received information that Defendants White, Barrios, and Hernandez were successfully identified as employees of California State Prison – Corcoran, but Defendant Gutierrez could not be identified. (Doc. Nos. 23, 24). On May 5, 2023, the United States Marshal returned the summons on Defendant Gutierrez as unexecuted. (Doc. No. 25). The U.S. Marshal was unable to identify Defendant Gutierrez for service of process. (*Id.*). If Plaintiff

1 is unable to provide the Marshal with the necessary information to identify and locate this
2 defendant, Defendant Gutierrez shall be dismissed from this action, without prejudice.
3 Specifically, Federal Rule of Civil Procedure 4(m) provides as follows:

4 If a defendant is not served within 120 days after the complaint is filed, the
5 court—on motion or on its own after notice to the plaintiff—must dismiss the
6 action without prejudice against that defendant or order that service be made
7 within a specified time. But if the plaintiff shows good cause for the failure, the
court must extend the time for service for an appropriate period.

8 Fed. R. Civ. P. 4(m).

9 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the
10 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
11 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
12 summons and complaint, and . . . should not be penalized by having his or her action dismissed
13 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
14 duties required of each of them” *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990). “So
15 long as the prisoner has furnished the information necessary to identify the defendant, the
16 marshal’s failure to effect service is ‘automatically good cause’” *Walker v. Sumner*, 14 F.3d
17 1415, 1422 (9th Cir. 1994), abrogated on other grounds by *Sandin v. Connor*, 515 U.S. 472, 115
18 (1995). However, where a *pro se* plaintiff fails to provide the Marshal with accurate and
19 sufficient information to effect service of the summons and complaint, the Court’s *sua sponte*
20 dismissal of the unserved defendant is appropriate. *Walker*, 14 F.3d at 1421–22.

21 Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause
22 why Defendant Gutierrez should not be dismissed from the action at this time. Plaintiff may
23 respond to this order by providing additional information that will assist the Marshal in
24 identifying Defendant Gutierrez for service of process. For example, Plaintiff may provide an
25 approximate date for the incident at issue, a building number or facility where the incident took
26 place, or other identifying physical features for Defendant Gutierrez.

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1 Accordingly, it is ORDERED:

2 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show cause
3 why Defendant Gutierrez should not be dismissed from this action; and
4 2. **The failure to respond to this order or the failure to show cause will result in the**
5 **dismissal of any unidentified defendant from this action, due to Plaintiff's failure to**
6 **serve process pursuant to Federal Rule of Civil Procedure 4(m).**

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8 Dated: June 8, 2023


9 HELENA M. BARCH-KUCHTA
10 UNITED STATES MAGISTRATE JUDGE
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